

State of Florida

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Public Service Commission

DOCKET FILE COPY ORIGINAL

August 14, 1996

BY FEDERAL EXPRESS

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 96-149 - Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area.

Dear Mr. Caton:

Enclosed are the original and twelve copies of the Florida Public Service Commission's comments in the above docket. Please date-stamp one copy and return it in the enclosed self-addressed stamped envelope. We are also forwarding a hard copy, plus diskette, of our comments to Janice Myles of the Common Carrier Bureau.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia B. Miller".

Cynthia B. Miller
Associate General Counsel

CBM/jb
Enclosure

cc: International Transcription Service
2100 M Street, NW
Suite 140
Washington, D.C. 20037

Brad Ramsay
NARUC
1102 Interstate Commerce Commission Building
Constitution Avenue & 12th Street NW
Washington, D.C. 20042

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:)

Implementation of the Non-Accounting)
Safeguards of Sections 271 and 272 of)
the Communications Act of 1934, as)
amended;)

and)

Regulatory Treatment of LEC Provision)
of Interexchange Services Originating)
in the LEC's Local Exchange Area)

CC Docket No. 96-149

SUMMARY OF COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

On July 18, 1996, the FCC issued two separate NPRMs on Non-Accounting and Accounting Safeguards, Dockets No. 96-149 and 96-150, respectively. It is the opinion of the FPSC that the issues in these two Dockets are highly interrelated and should not be addressed separately. Therefore, the issues addressed in the comments filed by the FPSC in either Docket may overlap.

At several points throughout the NPRM on Non-Accounting Safeguards, the question arises whether FCC authority, regarding the rules in the proceeding, should be applied to both interstate and intrastate services. In addition, comments are sought on the FCC's authority to preempt state regulation with respect to some of the non-accounting matters addressed in sections 271 and 272. It is the opinion of the FPSC that enforcement of sections 271 and 272 is the joint responsibility of the State commissions and the FCC, and that the State commissions should have the authority to

establish accounting and non-accounting safeguards in addition to those established by the FCC.

Finally, the FPSC supports the Resolution adopted by NARUC on July 25, 1996 regarding audit guidelines NARUC believes are necessary for performance of a joint federal/state audit as prescribed in section 272. The FPSC believes that the state and federal functions described in the guidelines are consistent with the intent of sections 271 and 272 to protect against BOC cross-subsidization. In addition, the performance of such an audit would facilitate detection and adjudication of violation of the separate affiliate and nondiscrimination requirements in section 272.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of:

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amended;

and

Regulatory Treatment of LEC Provision
of Interexchange Services Originating
in the LEC's Local Exchange Area

CC Docket No. 96-149

COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

On July 18, 1996, the Federal Communications Commission (FCC) released its Notice of Proposed Rulemaking (NPRM) on Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended; and Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area in Docket No. 96-149. The Florida Public Service Commission (FPSC) submits the following comments in response to that NPRM.

In addition to the above, on July 18, 1996, an NPRM was released regarding the Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996 in Docket No. 96-150. It is the FPSC's opinion that the issues in each NPRM could be more effectively addressed in one proceeding. The issues are so integrated that many recommendations for non-accounting safeguards may be equally as viable for

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accounting safeguards. Therefore, the comments of the FPSC to each NPRM will necessarily overlap.

Throughout the NPRM on non-accounting safeguards, the issue arises frequently concerning whether the rules implemented in this proceeding should be applied to both interstate and intrastate services. For example, in paragraph 20, comments are sought on "whether sections 271 and 272, and our authority pursuant to those sections, apply only to interstate interLATA services and interstate interLATA information services, or to interstate and intrastate interLATA services and interstate and intrastate interLATA information services." In paragraph 28, comments are sought "on the extent to which the Commission may have authority to preempt state regulation with respect to some or all of the non-accounting matters addressed in sections 271 and 272." Finally, in paragraph 30, it is stated that:

"...we believe that such manufacturing activities plainly cannot be segregated into interstate and intrastate portion. Thus, any state regulation inconsistent with sections 271 and 272 or our implementing regulations would necessarily thwart and impede federal policies, and should be preempted. We tentatively conclude, therefore, that our authority under section 272 extends to all BOC manufacturing of telecommunications equipment and CPE."

It is the opinion of the FPSC that State commissions should have the authority to establish accounting and non-accounting safeguards in addition to those established by the FCC. There may be State

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specific cross subsidy or competitive concerns that do not lend themselves to a nationally prescribed solution. Historically, States have been able to prescribe accounting rules in addition to those of the FCC. The same should be true for non-accounting safeguards.

Further, it is also the opinion of the FPSC that ensuring compliance with sections 271 and 272 is the responsibility of both federal and state regulators. In several places in section 271, the requirement for joint federal/state efforts are stressed. For example, in subsections 271(c)(1)(A) & (B), State approval or permission of interconnection agreements is necessary before FCC approval can be given. Per section 271(d)(2)(B), the FCC must verify compliance with the requirements of section 271(c), through consultation with appropriate State commissions, before they may authorize BOC provision of interLATA services. Also, in section 271(d)(3)(A), it is stated that the FCC shall not authorize a BOC to provide interLATA services originating in any in-region State unless the company has met the requirements of section 271(c)(1) for State approval of interconnection agreements, and unless the requested authorization is in accordance with the requirements of section 272.

In section 272(d)(1), biennial audits are required to be paid for by BOCs and performed by independent auditors on a joint

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federal/state basis. In addition, State commissions, as prescribed in section 272(d)(3), have full access to information necessary for the regulation of rates as well as working papers, and full access to all supporting materials of the auditor who performs the audit. The intent of sections 271 and 272 appears to be that State commissions should have a role in the enforcement of these rules. Therefore, it is the opinion of the FPSC that joint efforts should be made to ensure BOC compliance with these sections.

While section 272 prescribes that a joint federal/state audit should be conducted, the section does not describe how that process is to work and the particular responsibilities of the State commissions and the FCC. On July 25, 1996, the National Association of Regulatory Utility Commissioners (NARUC) passed a Resolution which adopted certain guidelines regarding the joint federal/state audits. The FPSC believes that the document is a comprehensive examination of many necessary elements that such an audit would require. The document outlines specific audit guidelines that should be implemented in order to ensure BOC compliance with section 272. In addition, the document outlines the role NARUC believes the State commissions and the FCC should have in the audit process. The roles of the State commissions and the FCC would be that of joint oversight of the entire audit process from BOC selection of the auditor to issuance of comments

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to the audit report. We believe that the state and federal functions described in the guidelines document are consistent with the intent of sections 271 and 272 to protect against BOC cross-subsidization. Therefore, we support the Resolution and the audit guidelines as adopted by NARUC.

In paragraph 95 of the NPRM, the FCC asks for comments on what requirements or mechanisms are necessary to facilitate detection and adjudication of violations of the separate affiliate and nondiscrimination requirements in section 272. The performance of a joint audit as described in the NARUC Resolution would facilitate detection of many discrimination violations as well as any violations of section 272(b)(1) which requires that a separate affiliate shall operate independently from the BOC; section 272(b)(2) which requires maintenance of separate books, records, and accounts; section 272(b)(3) which requires the affiliates to have separate officers, directors, and employees from the BOC; section 272(b)(4) which prohibits the affiliate from obtaining credit under any arrangement that would permit a creditor to have recourse to the assets of the BOC; and section 272(b)(5) which requires the affiliate and the BOC to perform only arm's length transactions.

In summary, we believe that the issues in Dockets 96-149 and 96-150 should not be addressed separately. Therefore, the issues

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addressed in the comments filed by the FPSC in either Docket may overlap. In addition, we also believe that enforcement of sections 271 and 272 is the responsibility of both the State commissions and the FCC. Finally, the FPSC supports the Resolution adopted by NARUC on July 25, 1996 which sets out specific audit guidelines by which the joint federal/state audit, prescribed by section 272, should be conducted.

Respectfully submitted,



CYNTHIA B. MILLER
Senior Attorney

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
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DATED: August 14, 1996